IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 266 OF 2007
IN
CRIMINAL APPLICATION No. 1543 OF 2007

The State of Maharashtra [Through Nandgaon P. Stn.]	) [Original) Complainant]	Applicant
Vs.		
1. Vijay Bajirao Kaklij Age 30 years,	)	
2. Latabai Vijay Kaklij, Age 22 years,	)	
3. Jijabai Bajirao Kaklij, Age-65 years,	)	
All R/o. Tandulwadi, Taluka Nandgaon.	)	Respondents [Original Accused Nos. 1 to 3]

Dr. F. R. Shaikh, APP for the applicant.

Mrs. Ruchu Dhuru with Mrs. Vanita S. Bhave, advocate for respondent Nos. 1 to 3.

CORAM : R.M.S. KHANDEPARKAR
AND
A.A. SAYED, JJ.

DATE : NOVEMBER 21, 2007.

ORAL JUDGMENT [R.M.S. KHANDEPARKAR, J.]

. This is an application for condonation of delay of 292 days in filing application for leave to appeal, against the judgment dated 4th October 2005 passed by the 2nd Ad-hoc Additional Sessions Judge at Malegaon, district Nashik in

Sessions Case No. 14 of 2005.

2. Undisputedly the application for certified copy was made on 6th October 2005 and the certified copy was ready and delivered on 20th March 2006. It is the case of the applicant that the Additional Public Prosecutor at Malegaon under his letter dated 12-2-2007 submitted the papers to the Law and Judiciary Department, requesting to prefer an appeal against the impugned judgment. The Law and Judiciary department thereafter on scrutinizing the papers under resolution dated 13th March 2007 directed the office of Public Prosecutor, High Court (A.S.), Mumbai to file the appeal. The necessary papers in that regard were received in the office of Public Prosecutor on 21st March 2007 and the present appeal was filed on 5th April 2007.

3. Upon hearing the learned advocates for the parties, it reveals that there is absolutely no explanation on record as regards the period from 20th March 2006 to 12th February 2007, apart from stating that after receipt of certified copy of impugned judgment on 20th March 2006, Additional Public Prosecutor at Malegaon

submitted the papers to the Law and Judiciary department by his letter dated 12th February 2007 requesting to prefer the appeal. There is no explanation whether as regards for delay of a long period from 20th March 2006 to 12th February 2007 to submit the opinion and the necessary papers by the concerned APP at Malegaon to the Law and Judiciary department. It was necessary for the Law and Judiciary department to get necessary explanation in that regard from the concerned Additional Public Prosecutor, and to ascertain whethere there was negligence on the part of the concerned law officer to take appropriate action and explain the same in the application for condonation of delay. Failure in that regard discloses that there is no sufficient cause disclosed for the said period for consideration of the said delay.

4. Even otherwise, we do not find any case on merit to consider the application for grant of leave to appeal. The learned trial Court has acquitted the respondents/accused who were charged for the offences punishable under S. 323, 504, 304 read with S. 34 of I.P. Code. The trial Court has clearly observed that, "under

the circumstances when there exists dispute between accused, and one Pramod and his grand father deceased Rambhau and when this dispute is long standing, it is rather difficult to rely on the uncorroborated testimony of witness Pramod that accused Vijay gave push to deceased Rambhau resulting into fall of Rambhau causing fracture to neck-femur". On the scrutiny of testimony of Pramod and other evidence on record the same disclose that the same nowhere disclose that the deceased Rambhau, was not pushed by the accused intentionally or knowing that he caused to suffer fatal injury, so as to prove the charge under S. 304 of I.P. Code against him.

5. It is borne out from the record that testimony of Pramod has not been corroborated by any other witness. Even otherwise plain reading of testimony of Pramod itself, nowhere makes out case of offence by the accused under S. 304 of I.P.C., as the testimony nowhere disclose that deceased Rambhau was pushed by the accused with intention or knowledge that Rambhau will sustain injury which should cause his death. There being no evidence produced on record by the prosecution to establish the offence under S. 304 of I.P.C.

by the respondent, no fault found in the impugned judgment in acquitting the respondents for the alleged offence.

6. As no infirmity or illegality is disclosed in the impugned judgment and the judgment clearly discloses proper analysis of the entire evidence of the prosecution before arriving at the finding about failure of prosecution to prove the charges against the respondent, we do not find any case for grant of leave to appeal against the impugned judgment. Hence, this prayer stands rejected.

7. In the circumstances therefore, we do not find any case made out for condonation of delay in preferring application for grant of leave to prefer appeal. As also there being no case on merits, we do not find any case for condonation of delay of 292 days. Hence, the question of condonation of delay along with the prayer of leave for appeal is hereby dismissed.

8. Matter does not end here. From the application and the records, it is seen that the impugned judgment was delivered on 4th October

2005 and the application for certified copy was made on 6th October 2005, which was furnished to the applicant only on 20th March 2006. It means nearly 5 months were taken to furnish the certified copy of the impugned judgment. It is necessary for the registry to seek explanation from the office of Additional Sessions Cout Malegaon, district Nashik as to why such a long time was taken by the registry of the concerned Court to furnish the certified copy of the impugned judgment. The explanation in this regard should be sought within 15 days from the registrar or the officer in charge of the registry of the said Court with all necessary details in that regard and on receipt of explanation, the same should be placed before this Court on 12th December 2007.

9. Meanwhile though the application for delay is dismissed, matter be fixed for order in relation to notice required to be issued to the concerned registry of the concerned Court, on 12th December 2007

9. Registry to communicate this order to the concerned Registrar or the officer in charge

of Malegaon, district Nashik, Sessions Court forthwith.

Sd/-
[R.M.S. KHANDEPARKAR, J.]

Sd/-
[A. A. SAYED,J.]